IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16546 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNABEN VITHALBHAI BALDHA & 2 - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1 - 3.
MR HEMANT MAKWANA, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 29/06/2007
ORAL JUDGMENT

1. The petitioners, three in number, are before this Court being aggrieved by order dated 26.06.2007 made by the Development Commissioner – respondent No.1 herein. It is contended that the order is illegal, arbitrary, contrary to the Act, as

also in breach of principles of natural justice and also violative of Articles 14 and 19(1)(g) of the Constitution of India.

The facts leading to the present petition are that petitioner No.1 is the President of Appeal Committee of Rajkot District Panchayat, whereas, petitioner Nos.2 and 3 are the members of that Committee. The Appeal Committee in its meeting dated 20.07.2006 passed certain resolutions including resolution No.6, whereby the Committee thought it fit to grant ex-parte injunction against notice dated 26.06.2007 issued by Taluka Development Officer to one Shri Khimabhai Gokulbhai Patel, resident of Village Kuvadva by which said Shri Khimabhai Gokulbhai Patel was asked to remove the construction, as the same was held to be an encroachment on the Government land. Said Shri Khimabhai Gokulbhai Patel made an application to the District Panchayat, that application was under consideration of the Appeal Committee.

While the Appeal Committee was considering the matter, it was brought to the notice of the Committee by the

Secretary and Deputy District Development Officer that the matter is subjudice before the Court. It was brought to the notice of the Committee that the matter is large open before the District Judge – Fast Track Court No.2 being Civil Misc. Appeal No.63 of 2006 filed on 04.07.2006. Surprisingly, the Committee by recording that **there is no injunction** against the Committee from proceeding with the matter decided to proceed and passed an order of maintaining status-quo. The Committee also recorded that the applicant (Khimabhai Gokulbhai Patel) has produced certain documents like Village Form No.2 and on perusal of that document i.e. Village Form No.2, it is not clear that there is encroachment. It is further recorded that the Committee took into consideration the said document and decided that on the basis of that document, the status-quo should be maintained.

2. Later on, the very same Committee in its meeting dated 05.06.2007 passed another resolution being resolution No.7, wherein it is recorded that in the meeting dated 20.07.2006, the Committee had decided on the basis of the document produced, to maintain status-quo. The Committee then proceeded to record that the Secretary of Appeal Committee has informed the Appeal

Committee that against the decision taken in the meeting of 20.07.2006, the Taluka Panchayat, Rajkot has filed a Revision Application before the State Government and that the said Revision Application is pending for decision. The Committee thereafter recorded that "as at present with regard to the matter in question, there is no matter in operation about the injunction. At this stage taking into consideration this fact, the order passed by the Appeal Committee in its meeting dated 20.07.2006 of maintaining the status-quo is withdrawn" (emphasis supplied).

Despite best efforts, the Court is not able to spell out any cogent reason from the aforesaid sentence. The only inference that can be drawn is that the order in the meeting dated 20.07.2006 was passed for extraneous consideration and having realized that the matter is under consideration of the Government in a Revision Application, the Appeal Committee withdrew that order. There is no reason recorded even in the form of later development which persuaded the Appeal Committee to withdraw its own order, passed on 20.07.2006 recording that there is no injunction against the Appeal Committee and therefore, the Appeal Committee can proceed to decide the matter and by relying upon a

document – Village Form No.2, status-quo order was granted.

That document is neither altered, not cancelled, it remains as it is even at the time of second meeting i.e. 05.06.2007 and still after knowing about the pendency of the Revision Application, the Appeal Committee decided to withdraw its own order. This speaks volumes for the conduct of the President and members of the Appeal Committee.

3. In this light, the Court finds no reason to interfere with order dated 20.06.2007. The Development Commissioner – respondent No.1 had issued show cause notice dated 23.04.2007 and in that, it is specifically mentioned that the President and the members of Appeal Committee are required to observe the provisions of Gujarat Panchayat Act, 1993 and the Rules framed thereunder. It is also set out in the notice that the said Khimabhai Gokulbhai Patel, resident of Kuvadva has constructed the shops opposite to Panchayat Office on a Government land and that Talati-cum-Mantri had issued a notice to said Shri Khimabhai Gokulbhai Patel on 25.01.2006. Subsequently, Taluka Development Officer had also issued a show cause notice on 08.02.2006. In the said

matter, Regular Civil Suit No.150 of 2006 was filed in the Court of Principal Civil Judge, Rajkot and the Court had rejected the injunction application filed by the said Khimabhai Gokulbhai Patel by order dated 22.06.2006 and when the said order of the learned Civil Judge was challenged before the District Court, the District Court had not granted any injunction order. The Deputy District Development Officer had drawn the attention of the Appeal Committee to all these facts.

Despite this, the Appeal Committee proceeded to grant an injunction order by asking the parties to maintain status-quo in the circumstances which are discussed hereinabove and which are required to be reiterated even at the cost of repetition that the Appeal Committee under the excuse that there is no injunction against the Appeal Committee, took up the matter for consideration and passed the order of status-quo. This particular act of the President of the Appeal Committee and its members is considered to be sufficient for removing them as member of Rajkot District Panchayat. The Court finds no error committed by the Development Commissioner in passing order dated 26.06.2007.

4. Mr. Pahwa, learned advocate emphatically submitted that the matter was kept for hearing on 19.06.2007, but on that day, no hearing had taken place.

This submission is found without any substance, inasmuch as, the Development Commissioner has recorded in the order that the matter was kept on 14.05.2007, 15.05.2007 and 12.06.2007, but the hearing was adjourned for one reason or the other. On 19.06.2007, at the time of hearing Mr. Jadeja, Vice President submitted his written submissions. On behalf of the District Panchayat, a representative was present. Mr. Jadeja in his submissions submitted that the encroacher is an agriculturist; that as he represented against the Sarpanch about the irregularities committed in the matter of Checkdam, the action was taken against him as a reaction in the political matter. When the matter was presented before the Appeal Committee, it was represented that the encroacher is having 25 sq. yards land and therefore, the stay was granted, but when the facts were brought to the notice of the Appeal Committee, the stay was vacated. That the same was a technical mistake, that the encroacher was the complainant, that instead of 25 sq. yards additional 100 sq. yards land was under

encroachment, that the present representation is made after nine months, the Appeal Committee came to know after two months of granting of stay that there is encroachment. Therefore, notice is required to be withdrawn. In the said matter, written as well as oral submissions were already made and therefore, instead of adjourning the matter for further hearing, the hearing was completed. In view of this specific recording at the hearing on 19.06.2007, the submission of Mr. Pahwa cannot be accepted.

5. Mr. Pahwa, learned advocate submitted that the authority could not have taken action under Section 85 of the Panchayat Act. He submitted that Section 85 is only for the purpose of removing any member of a Panchayat or a President or Vice President thereof and not from the post of President of the Appeal Committee.

The submission made by Mr. Pahwa is not acceptable. Mr. Pahwa placed reliance on Section 270 which bars any action against Panchayat etc. and previous notice before institution of any proceedings. Learned advocate Mr. Pahwa submitted that there is a bar against taking any action under Section 270 and therefore, no

action could have been taken against the present petitioners. The submission of Mr. Pahwa cannot be accepted because it is thoroughly misconceived. Action which is barred under Section 270 is not the disciplinary action against the member, the President or Vice President of Panchayat. The action which is barred is the action to be taken by third party against the member or President or Vice President of the Panchayat for the acts done by him in his official capacity.

6. The petition is found without any substance and the same is dismissed.

[RAVI R. TRIPATHI,J.]

mrpandya*